



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/711,398

09/16/2004

Alexander P. RIGOPULOS

HXT-007

5397

959 7590 09/30/2008

LAHIVE & COCKFIELD, LLP  
FLOOR 30, SUITE 3000  
ONE POST OFFICE SQUARE  
BOSTON, MA 02109

EXAMINER

RENDON, CHRISTIAN E

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

09/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,398	<b>Applicant(s)</b> RIGOPULOS, ALEXANDER P.	
	<b>Examiner</b> CHRISTIAN E. RENDÓN	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,11-17,19-21,23 and 81-105 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,11-17,19-21,23 and 81-105 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

This office action is in response to the amendment filed on January 9, 2008 in which applicant responds to the claim rejections. Claims 1, 2, 7, 11-17, 19-21,23,81-104 are still pending

### ***Claim Rejections - 35 USC § 103***

**Claim 1, 19-20, 23 & 86 are rejected under 35 U.S.C. 103(a) as being unpatentable by Final Fantasy Anthology: Collector's Edition (<http://psx.ign.com/articles/161/161674p1.html>) further evidence provided by a Final Fantasy Walkthrough (<http://www.gamefaqs.com/console/snes/file/554041/7104>).**

1. Video game reviewer, Francesca Reyes discloses that the video game company Square released a CD-ROM version of 'Final Fantasy V and VI' in bundle package or a collector's edition that also included a "music CD compilation of fan-elected music tracks from each title" (par. 2). 'Final Fantasy VI' which was originally titled 'Final Fantasy III' when it was first released in the United States in 1994 is considered a legendary game by most for its beautiful soundtrack that complements a compelling story involving a large cast of unique characters. There are so many unique portions of the story that many key or fun chapters have nicknamed: 'The Search for Terra', 'The Esper World', and 'The Opera Scene.' In the 'opera scene' the player must prevent the kidnapping of Maria the opera singer by having the character Celes sing in her place. In order for the player to progress further in the story, he or she must memorize the lines to the opera called "Aria di Mezzo Caratter" before 'performing' in front of the audience. Once on stage the player must choose from a list of lines the next correct line before time runs out or he or she will have to repeat the whole scene. A player will receive a 'game over' scene if he or she fails three times. The bundled CD only contained a small collection of songs from both Final Fantasy games and the aria was one of the songs left out of the soundtrack. If the song was chosen then the bundle would offer a CD containing the soundtrack of a

Art Unit: 3714

game that has a portion of the story based on musical content. The Office views the applicant's claim as obvious result of the inclusion of the aria since the actual weight in the claims is containing 'a musical portion of a game with music content' and deciding a soundtrack list is mere design choice. Furthermore the soundtrack contains songs found exclusively in the video game in a music playback format.

**Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Final Fantasy**

**Anthology: Collector's Edition in view of [www.samgoody.com](http://www.samgoody.com).**

2. The above description of 'Final Fantasy Anthology' and the limitations they pertain is considered within the art rejection as well. The prior art is silent about where the 'Final Fantasy Anthology: Collector's Edition' is sold. The Sam Goody website is used to represent the physical store and an online music store. Sam Goody is known as specialty music store but they do sell other products like books, videogames and movies. Therefore a music store like Sam Goody would sell a video game in proximity to the quantum of music content when they are offering this edition of 'Final Fantasy Anthology.'

**Claims 11-17, 81, 83 and 105 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

**Final Fantasy Anthology: Collector's Edition in view of Karaoke Revolution**

**(<http://ps2.ign.com/articles/458/458064p1.html>) and in further view of Karaoke Revolution**

**FAQS (<http://www.gamefaqs.com/console/ps2/file/914993/28658>).**

3. The above description of 'Final Fantasy Anthology' and the limitations they pertain is considered within the art rejection as well. The prior art fails to disclose the use of a spatial path to visually describe the progress of the song. However the PlayStation 2 (PS2) version of 'Karaoke Revolution' (KR) game discloses the use of a spatial path as a musical time axis. A player begins by choosing a character and customizing their style to represent the player's inner musician. The character resembles a musician since they are holding a microphone when he or she is on stage. The

Art Unit: 3714

game also contains an innovative scoring system that ranks a player on their rhythm and pitch (KR: par. 4). The audience's reaction and your computer-generated musician's movements and appearances are based on a player performance (KR: par. 4). Therefore a player will encounter a better game experience as he or she improves through practice. A player can practice the songs by entering into one of two modes: 'Karaoke' or 'Training' mode (FAQS). Since the player is not scored or rated, he or she can concentrate on learning the songs by having the game fully play back the song and listening for the different pitches and rhythms. It would have been obvious to one of ordinary skill to include a compilation of these songs on a single CD with the game as a study aid for the player away from the gaming system. A music CD with these songs that are sung by artist of different genres on a single CD would make practicing more convenient for a player since all of the necessary songs can be found in one central place. Furthermore the idea of selling a game soundtrack with the respective game is a practice well known in the art of gaming and is taught by 'Final Fantasy Anthology' within this rejection.

4. Regarding claim 83, the musician is either the player or the computer-generated character. The musician previously performed the entire musical content the last time the player sang those songs while playing the game.

5. Regarding claim 105, the limitations call for a single computer readable medium with executable code for executing a game and music play back. As stated above, Karaoke Revolution is a game based on a quantum of music content that allows for the music play back of the songs during training mode.

**Claims 84-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Final Fantasy Anthology: Collector's Edition in view of Karaoke Revolution (PS2) in further view of one of ordinary skill.**

Art Unit: 3714

6. The above description of 'Final Fantasy Anthology,' 'Karaoke Revolution' (PS2) and the limitations they pertain is considered within the art rejection as well. The art combination fails to disclose the use of mp3 and wav as the music playback format. Since these two music formats fulfill the same function the prior art's disclosed practice modes and the music CD, these two limitations are viewed, as mere design choice therefore carry no patentable weight.

**Claims 87-89 and 95-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karaoke Revolution (<http://www.gamespot.com/xbox/puzzle/karaokerevolution/news.html?sid=6105361&mode=recent>) in view of Karaoke Revolution FAQs (<http://www.gamefaqs.com/console/ps2/file/914993/28658>) and in further view of XBOX Live Launch Center (<http://www.gamespot.com/gamespot/features/all/xboxlive/index-vq.html>).**

7. The above description of 'Karaoke Revolution' (PS2) and the limitations they pertain is considered within the art rejection as well. In August 2004 Konami announced, "an enhanced version of the first Karaoke Revolution will be released for the XBOX" (GameSpot: par. 1). The first version of 'Karaoke Revolution' was released for the PlayStation 2 and was described above. The XBOX version will feature a longer song list and support downloadable songs increasing the number of songs in the library (GameSpot: par. 2) via XBOX Live! An XBOX owner who purchases the 'Starter Kit' and provides an Internet connection to the system will gain access to the XBOX Live network (Launch Center). The 'Starter Kit' costs \$49.95, which includes a year-long subscription to the services. One of the services is access to free or priced downloadable content for certain games (Launch Center) in an attempt to increase the replay value. Therefore portions of the game like new songs are stored on a server and offered to players through an online store. The Office would like to clarify that even if the songs were offered for free by XBOX Live, the network is still a store since you have to pay to gain access to the network and the person is paying for the songs through the membership fee.

Art Unit: 3714

8. Regarding claims 87-88, a player can practice the songs by entering into one of two modes: 'Karaoke' or 'Training' mode (FAQS). Since the player is not scored or rated, he or she can concentrate on learning the songs by having the game fully play back the song. Therefore the game offers a form of music play back that is not a game.

**Claims 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karaoke Revolution (PS2 and XBOX) in view of Karaoke Revolution FAQS and in further view of one of ordinary skill.**

9. The above description of 'Karaoke Revolution' (PS2 and XBOX version) and the limitations they pertain is considered within the art rejection as well. The prior art fails to disclose the use of mp3, wav and aiff as the music playback format. Since these three music formats fulfill the same function the prior art's disclosed practice or music playback modes, these three limitations are viewed, as mere design choice therefore carry no patentable weight.

**Claims 2 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karaoke Revolution (PS2 and XBOX) in view of Dance Dance Revolution (<http://psx.ign.com/articles/161/161525p1.html>) and in further view of Amplitude ([http://www.gamespot.com/ps2/puzzle/amplitude/review.html?om\\_act=convert&om\\_clk=tabs&tag=tabs;reviews](http://www.gamespot.com/ps2/puzzle/amplitude/review.html?om_act=convert&om_clk=tabs&tag=tabs;reviews)).**

10. The above description of 'Karaoke Revolution' (PS2 and XBOX) and the limitations they pertain is considered within the art rejection as well. The genre of music-based video games as also commonly known as rhythm-action video game. As a music video game tries create a style or niche it can be further classified because of the gameplay. 'Karaoke Revolution' can be further classified as a sing-along character-action game. The prior art fails to offer a dance-along, a first or third-person shooter portion in the game. However the review of 'Dance Dance Revolution' (DDR) discloses the game as a dance-along character-action rhythm video game with the goal to dance or place your feet on the appropriate floor mat sensor in terms of the rhythm of the song. The review of 'Amplitude'

Art Unit: 3714

reveals a rhythm game as a 3<sup>rd</sup> person shooter rhythm video game. The player controls a ship and must capture notes by shooting at them. Since a player can view the ship, the game is a 3<sup>rd</sup> person shooter. However one of ordinary skill could add a 1<sup>st</sup> person mode by simply offering a view from inside the ship. In other words, the references are brought into prosecution to express the point that creating a video game with may different portion of gameplay that would expand the game into other genres is well known in the art even for music-based video games. Therefore the applicant's limitations for this claim are obvious and not novel.

**Claims 7 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karaoke Revolution (PS2) in view of Dance Dance Revolution and in further view of Kumar et al. (US 6,514,083 B1).**

11. As previously disclosed 'Karaoke Revolution' uses a microphone as its musical game controller. The accuracy of the player's singing causes the computer-generated image to move to the beat (KR: par. 4). However the prior art is silent about allowing a player to control the computer-generated image's movement through a dance pad. The prior art is also silent about the use of a camera.

12. 'Dance Dance Revolution' (DDR) teaches the use of a dance pad to input movements at appropriate times and ultimately dictate the movements of a computer-generated image. Kumar teaches the implementation of a camera producing a series of video frames including at least one performer and a karaoke processor system providing a video environment for the karaoke performer. Kumar teaches the ability to extract images from the camera to be placed into the virtual environment of the karaoke video display (see abstract). Kumar teaches that one would be motivated to incorporate this element into a standard karaoke system to further enhance the "interactive participation of karaoke customers with their karaoke experience" (see col. 2: In 33-35). Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to incorporate the



Art Unit: 3714

camera of Kumar and the function of a dance pad as used by DDR with a home consol music-based game to create a more realistic karaoke experience.

### ***Response to Arguments***

13. Applicant's arguments filed 8/19/08 have been fully considered but they are not persuasive. For the record, the Examiner applied the **Final Fantasy Anthology: Collector's Edition** as a prior art teaching the selling of a game and its soundtrack as a bundle pack. As stated above, Final Fantasy VI has a music based mini-game that allows players to sing a song by choosing the right line. Since the songs included on the music CD were a small collection of a three CD collection, the Examiner stated the selection of the songs is 'mere design choice' since the mini-game song "Aria di Mezzo Caratter" exists; thus allowing for the possibility of "offering for sale as a single unit (a bundle pack) an article of manufacture which embodies the quantum of music content in a music playback format.' The applicant continues to argue the quality of the prior art combination by stating several comments. The prior art bundle could or could not increase the cost of the game, in other words this is a speculation on the part of the applicant since the possibility of the CD being a promotion gift is known in the art. The applicant argues the lack of obviousness in the prior art due to the difficulty of obtaining music license even though the game developer of the prior art game also owns the soundtrack therefore this argument is irrelevant. Furthermore, the likely hood of a person being forced to purchase tracks they already own is less likely through the prior art since the game developer is sole owner and source of the music thus a person buys a duplicate song at their own risk.

14. Regarding the arguments towards claim 87, XBOX Live is considered an online music store since a player is able to download more songs for a price from the XBOX network of servers. Furthermore, the training mode in Karaoke Revolution teaches the playback of music as stated in the claim. Even though the limitations fail to claim 'the music be playable outside the context of the game' the Examiner views training mode teaching 'music play back outside the context of the game' since

Art Unit: 3714

training mode is not a game. Regarding the applicant's final arguments the Examiner has already addressed the use of **Final Fantasy Anthology: Collector's Edition** to teach the bundling of music content in a music playback format (CD) along with a game based on the music content (Aria di Mezzo Caratter mini-game).

### **Examiner's Note**

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims is patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

### **Previous Response to Arguments**

The Examiner disagrees with the applicant's argument towards the suggestion that the prior art alone or in combination fails to teach obtaining music licenses or handling the increased cost of the game. The review for the Final Fantasy Anthology completion discloses the incredible experience that awaits a fan of role-playing games (RPG) and beautiful music; stating 'This is the type of experience that cannot be beat even by many of today's RPG and for the package and price' (IGN: Closing Comment, par. 3, lines 7-8). Therefore the reference teaches creating a quality product will increase demand enough to compensate for the increased cost of packaging a CD and video game together. Furthermore the selling of video game soundtracks along with a game or separate is a common

Art Unit: 3714

practice in the industry since companies like Square Enix hire skilled composer like Nobuo Uematsu to create songs and themes that are in light of the story and of various styles; therefore making the need for music licenses irrelevant and the selling of the 'Original Soundtrack' the only means of obtaining this original music on a music playback format. On the other hand Karaoke Revolution teaches containing several 'covers' of pop hits (TeamXbox: pg. 3, Audio, lines 2-5) that are frequently sung in karaoke bars. In other words, the song is not performed by the original artist therefore this reference teaches obtaining a music license for cover songs. Furthermore the GameSpot preview discloses 'Karaoke Revolution' will also contain a Motown addition of songs performed by the original artists (GameSpot: par 2) therefore also teaching obtaining music licenses for original recordings/performances. Finally the multiple references used to describe the scope of Karaoke Revolution for the XBOX is sufficient for the rejection of the applicant's claims towards obtaining more/extra songs (GameSpot: par. 2) for a music based game (Karaoke Revolution) through an online-store (XBOX Live). However the Examiner would like point out another reference (<http://reviews.teamxbox.com/xbox/855/Karaoke-Revolution/p1/>) that provides more details on the 'downloadable songs' mentioned in the GameSpot preview of the game. The developer 'Secret Level' included 50 songs and the option of downloading more songs (TeamXbox: pg. 3, Overall Gameplay, par. 2, lines 4-7). The downloadable songs are available in packs of 5 songs at \$4.99 a pack (TeamXbox: pg. 3, Audio, lines 6-10). Once again the Examiner states this reference is not necessary to reject the current claim limitations and is only provided to enlighten the applicant.

### ***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

Art Unit: 3714

mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN E. RENDÓN whose telephone number is (571)272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTIAN E RENDÓN/  
Examiner  
Art Unit 3714

CER  
/XUAN M. THAI/  
Supervisory Patent Examiner, Art Unit 3714